

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division

WATERSIDE CAPITAL CORPORATION and
WESLACO HOLDING COMPANY, LLC,

Plaintiffs,

v.

ACTION NO. 2:05cv727

HALES, BRADFORD & ALLEN, LLP, and
SALINAS, ALLEN & SCHMITT, LLP,

Defendants.

ORDER

This matter comes before the court on a motion to dismiss, filed by the defendants on March 1, 2006. The grounds for this motion were lack of personal jurisdiction, improper venue, and failure to state a claim upon which relief may be granted. The matter was referred to a United States Magistrate Judge by Order of April 5, 2006, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b), to conduct hearings, including evidentiary hearings, if necessary, and to submit to the undersigned proposed findings of fact, if applicable, and recommendations for the disposition of the motions.

The Magistrate Judge conducted hearings to address the issues of personal jurisdiction and venue. On October 11, 2006, the plaintiffs filed a motion for partial summary judgment on the issue of personal jurisdiction. On December 14, 2006, the Magistrate Judge issued a Report and Recommendation, recommending that this

court grant the motion for partial summary judgment and deny the motion to dismiss for lack of personal jurisdiction. On February 27, 2007, this court issued an Order adopting the Magistrate Judge's recommendation.¹

The Magistrate Judge subsequently conducted hearings to address whether the plaintiffs' complaint failed to state a claim upon which relief may be granted. On June 27, 2007, the Magistrate Judge issued a Report and Recommendation, recommending that this court grant-in-part and deny-in-part the motion to dismiss for failure to state a claim. The plaintiffs filed objections on July 16, 2007. The defendants filed a response on July 30, 2007.

The court, having examined the objections to the Magistrate Judge's Report and Recommendation, and the response to the objections, and having made de novo findings with respect thereto, does hereby adopt and approve in full the findings and recommendations set forth in the Report and Recommendation of the United States Magistrate Judge filed June 27, 2007. Accordingly,

¹Although the Report and Recommendation did not explicitly address the issue of venue, this issue was addressed implicitly by the Magistrate Judge. The Eastern District of Virginia is a proper venue for this action because a substantial part of the events giving rise to this action occurred in Virginia. See 28 U.S.C. § 1391(a)(2); Tr. of Proceedings at 18 (Nov. 13, 2006) ("That is a truck crash in Virginia."). It is also a proper venue in light of the fact that the defendants are subject to personal jurisdiction here. See 28 U.S.C. § 1391(a)(1), (c). Accordingly, to the extent it is necessary for the court to do so at this juncture, the court **DENIES** the defendants' motion to dismiss for improper venue.

the court **GRANTS-IN-PART** and **DENIES-IN-PART** the motion to dismiss for failure to state a claim upon which relief may be granted. Specifically, this motion is **GRANTED** as to the third-party breach of contract, professional malpractice, and constructive fraud/negligent misrepresentation claims and **DENIED** as to the fraudulent misrepresentation claim, which is now the only claim pending against the defendants in this action.

The Clerk shall forward a copy of this order to all counsel of record for the parties.

IT IS SO ORDERED.

/s/
Rebecca Beach Smith
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

August 2, 2007